

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|------------------|---|----------------------|
| LORI M. METZSCH, |) | |
| |) | 8:02cv592 |
| Plaintiff, |) | |
| |) | MEMORANDUM AND ORDER |
| vs. |) | (appeal) |
| |) | |
| AVAYA, INC., |) | |
| |) | |
| Defendant. |) | |

The plaintiff, Lori M. Metzsch, has filed a Notice of Appeal (filing no. 331), together with a Motion for Leave to Appeal in Forma Pauperis (filing no. 332) and a Motion for Stay and Waiver of Posting a Supersedeas Bond for Costs Pending Final Disposition of Appeal (filing no. 333). In filing no. 333, the plaintiff seeks to stay execution of the judgment entered on August 31, 2004, and subsequent orders, and the payment of costs taxed against her.

This is the plaintiff's sixth proceeding in the Eighth Circuit Court of Appeals during the course of the above-entitled case.¹ While the case was pending in the district court, the plaintiff filed an Emergency Motion for Stay pending a Petition for Writ of Mandamus (8th Circuit Case Nos. 03-4054 and 04-1453), an interlocutory appeal of discovery orders (8th Circuit Case No. 04-1744), an interlocutory appeal of a protective order in favor of the defendant (8th Circuit Case No. 04-2458), and an appeal from the judgment (8th Circuit

¹Ms. Metzsch worked for Avaya, Inc. for four months in 2001. This court granted summary judgment in favor of the defendant on the plaintiff's claims of age and gender discrimination, on the basis of the defendant's un rebutted showing that it had terminated the plaintiff's employment because, in the defendant's view, she was a difficult, abrasive, uncooperative and combative employee, and not because of her age or sex. The Eighth Circuit Court of Appeals affirmed. The United States Supreme Court denied the plaintiff's petition for writ of certiorari.

Case No. 04-3436). All appeals, all motions for rehearing, all motions to recall the mandate and to stay the mandate, and two petitions to the United States Supreme Court for writs of certiorari have been denied. The present appeal relates to sealed exhibits which the court retained at the plaintiff's request until the court received notice of the denial by the Supreme Court of the plaintiff's petition for writ of certiorari, and then mailed to the plaintiff in accordance with court procedures. The plaintiff apparently wants to refile the exhibits with this court, although it is wholly unclear for what purpose.

The plaintiff has wisely decided to retain the exhibits in an unopened sealed packet in the original packaging received from the Clerk of this Court (see filing no. 329). If the United States Supreme Court contacts the plaintiff or this court requesting the exhibits in connection with the Supreme Court's consideration of the plaintiff's current filing, the plaintiff or this court (with the plaintiff's assistance) will be able to produce the exhibits for the Supreme Court.

THEREFORE, IT IS ORDERED

1. That filing no. 332, the plaintiff's Motion for Leave to Appeal in Forma Pauperis, is granted; and
2. That filing no. 333, the plaintiff's Motion for Stay and Waiver of Posting a Supersedeas Bond for Costs Pending Final Disposition of Appeal, is denied.

DATED this 19th day of September, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge